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File *Legal*

OLC 79-1672

23 May 1979

MEMORANDUM FOR: See Distribution

AT FROM:

Chief, Legislation Division/OLC

SUBJECT: H.R. 3468

1. Subject legislation, recently introduced by Representative Robin Beard (R., Tenn.) and subsequently referred to the House Judiciary Committee, would amend the U.S. Criminal Code (Title 18 U.S.C.) to add a new Section 800 thereto.

2. Mr. Beard's bill would establish a bifurcated system of criminal penalties based on the type of information--Confidential or Secret--disclosed by a "Federal public servant" to anyone not authorized to receive it (paragraphs 800(a)(1) and (2)). Subsection (b) immunizes all non-authorized recipients of the protected information from prosecution as a principal, conspirator, or accessory after the fact.

3. Subsection (c) provides a rather elaborate system of "defenses to prosecution" which include:

-- the non-existence, at the time of the crime, of an Executive Branch "classification ombudsman and oversight mechanism";

-- the non-existence, at the time of the crime, of a procedure that would have allowed the defendant to have received review by the "classification ombudsman and oversight mechanism" regarding the continuing need for the classification given the information the defendant disclosed;

-- the fact that the information, at the time of the crime, was not "properly classified";

-- lack of any pre-indictment certification by either the head of the "classification ombudsman and oversight mechanism" or the Attorney General that the information disclosed was, at the time of the offense, properly classified;

-- public disclosure of the information prior to the criminal act; and,

-- disclosures to the U.S. Congress

4. In addition, notwithstanding the existence of and review by the "classification ombudsman and oversight mechanism" or Attorney General certification concerning proper classification, the court must, in camera, decide the classification issue de novo.

5. No action is presently scheduled on the bill and none is expected in the near future. We are sending it merely for your information. Should the bill begin to move we will solicit formal comments. Should you wish to file any comments at this stage, please contact of my staff.

Attachment:
As stated

Distribution:

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